REMARKS

Please amend Claim 11, as shown hereinabove.

Claims 1-20 remain pending in the application with Claim 11 being objected to and Claims 1-10 and 12-20 being rejected, as further discussed hereinbelow.

OBJECTIONS

The Examiner objected to Claim 11 as being "dependent upon a rejected base claim" and indicated that Claim 11 would be allowable "if rewritten in independent form including all of the limitations of the base claim and any intervening claims."

The Applicant amends Claim 11 to independent form and respectfully requests that the Examiner withdraw his objection and allow the claim.

REJECTIONS

Rejections under 35 U.S.C. § 103

Claims 1-10 and 12-20 are rejected under 35 USC Section 103(a) as being unpatentable over U.S. Patent No. 5,699,501 to Badovinatz et al. ("Badovinatz") in view of U.S. Patent No. 5,938,732 to Lim et at. ("Lim"). Applicant respectfully disagrees with these rejections.

In order for an obviousness rejection to be proper, the Patent Office must meet the burden of establishing a *prima facie* case of obviousness. Thus, the Patent Office must meet the burden of establishing that all elements of the invention are disclosed in the prior art, that the prior art contains a suggestion, teaching or motivation for one of ordinary skill in the art to modify a reference or combine references; and that the proposed modification of the prior art has a

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reasonable expectation of success, determined from the vantage point of the skilled artisan at the time the invention was made.[1]

Regarding Claim 1, the Examiner asserts that Badovinatz (col. 4, line 61 – col. 5, line 9) discloses "configuring a set of said processing nodes (i.e. processors) to participate in electing a leader" and equates this with "configuring a set of said servers to participate in electing a leader, each said server having a corresponding voting priority," as claimed in Applicants Claim 1. The Applicant respectfully disagrees.

Badovinatz, specifically, column 4, line 61 to column 5, line 9, simply discloses the steps necessary "to become a member of a processor group." Badovinatz <u>DOES NOT</u> disclose "configuring a set of said servers to participate in electing a leader, each said server having a corresponding voting priority," as claimed in Applicant's Claim 1. In fact, Badovinatz discloses a <u>recovery mechanism</u> and does not disclose, teach or suggest electing a group leader by servers having a voting priority.

To support this assertion, the Applicant directs the Examiner's attention to the disclosure of Badovinatz (column 1, line 55 to column 2, line 6) which discloses that a "new group leader is selected from a membership list ordered in sequence of joins of processors to the group of processors." According to the recovery mechanism of Badovinatz, "the new group leader is the next processor in the membership list after the failed group leader." Thus, the new group leader is already known and is <u>selected NOT elected</u>, as claimed in Applicant's Claim 1. As such, it follows that because Badovinatz does not disclose, teach or suggest "electing one server of said set to become said new leader," wherein the election is by servers, Badovinatz similarly does not disclose, teach or suggest "configuring a set of said servers to participate in electing a leader," also as claimed in Applicant's Claim 1.

Moreover, referring to Badovinatz (column 5, lines 34-41 and 53-62; column 13, lines 4-8) the Examiner asserts that, although "Badovinatz et al. do not specifically disclose voting priority," "Badovinatz et al. disclose the priority is ordered in the sequence of processors joining

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[1] *In re Fine, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); In re Wilson, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); Amgen v. Chugai Pharmaceuticals Co., 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996); In re Sang Su Lee, 277 F.3d 1338, 61 USPQ2d 1430 (Fed. Cir. 2002).*

the group." Relying on this assertion the Examiner erroneously concluded that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to include voting priority because it would improve the quality of service by placing tasks according to priorities and processing tasks having high priority." Applicant respectfully asserts that the Examiner has misinterpreted the teachings of Badovinatz and respectfully points out that Badovinatz discloses that group members may vote on the protocol, the group state value and even the multicasting of messages to group members (see Badovinatz, column 15, line 47 to column 16, line 23). However, Badovinatz does not disclose, teach or even mention electing a group leader by voting. In fact, Badovinatz teaches away from electing a group leader by designating that the group leader is the processor at the top of the membership list.

Additionally, referring to Lim, the Applicant asserts that Lim DOES NOT disclose, teach or suggest "a method for selecting a group leader among servers in a multicast network segment comprising the steps of: configuring a set of said servers to participate in electing a leader, each said server having a corresponding voting priority; determining when a new leader is needed; and electing one server of said set to become said new leader," as claimed in Applicant's Claim 1. Applicant's assertion is supported by the fact that the Examiner has failed to point out, in Lim, any disclosure, teaching or suggestion of the elements of Applicant's Claim 14. In fact, the Examiner simply asserts that "Lim et al. discloses a plurality of hosts." Lim does not make up for the deficiencies of the teachings of Badovinatz as discussed herein before. Furthermore, Lim does not contain any disclosure, teaching or suggestion to combine the disclosure of Badovinatz with the disclosure of Lim.

Therefore, Badovinatz and Lim alone or in combination do not disclose "configuring a set of said servers to participate in electing a leader, each said server having a corresponding voting priority" and "electing one server of said set to become said new leader," as particularly claimed in Applicant's Claim 1. Thus, the burden of establishing a *prima facie* case of obviousness is not satisfied and independent Claim 1 is patentably non-obvious over Badovinatz in view of Lim.

Claims 2-7 are dependent upon independent Claim 1, either directly or indirectly. Thus, because Claim 1 is patentably non-obvious over Badovinatz, in view of Lim, Claims 2-7 must also be patentably unobvious over Badovinatz, in view of Lim.

Moreover, for the reasons discussed hereinabove with regard to independent Claim 1, independent Claim 8 is patentably non-obvious over Badovinatz, in view of Lim. Claims 9, 10, 12 and 13 are dependent upon Claim 8, either directly or indirectly, and because Claim 8 is patentably non-obvious over Badovinatz, in view of Lim, Claims 9, 10, 12 and 3 must also be patentably non-obvious over the cited combination.

Regarding Claim 14, the Examiner asserted that Badovinatz (col. 6, lines 25-37; col. 7 lines 57-67) discloses "multicasting a message directly to a selected group" and equated this with "each member sending a registration message to said group leader," "group leader multicasting a registration report including an identifier corresponding to each registered member," "sending another registration message from any member receiving said registration report in which said member's corresponding identifier is missing" and repeating these steps "until each said member receives a registration report including its own corresponding identifier as a registered member." The Examiner then concluded that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to include registration of members because it allows only the authorized member of a specific group to access desired information and to receive notifications about changes or events that are [sic] occurred in that group." Applicant respectfully disagrees.

Badovinatz and Lim do not disclose or make reference to a registration report or a group leader multicasting a registration report to each registered member. Although Badovinatz does disclose multicasting information relating to protocol voting results (column 11, lines 33-49), this is not the same, or even similar, to a "group leader multicasting a registration report including an identifier corresponding to each registered member," as claimed in Applicant's Claim 14. Additionally, Badovinatz and Lim do not disclose a "group leader multicasting a registration report including an identifier corresponding to each registered member," "sending another registration message from any member receiving said registration report in which said member's corresponding identifier is missing" and repeating these steps "until each said member receives a registration report including its own corresponding identifier as a registered member," as claimed in Applicant's Claim 14. The Examiner has failed to point out, in either Badovinatz or Lim, any disclosure, teaching or suggestion related to elements (C), (D) an (E) of Applicant's Claim 14. As such, the burden of establishing *prima facie* obviousness is not satisfied. Therefore, independent Claim 1 is patentably non-obvious over Badovinatz in view of Lim.

Claims 15-20 are dependent upon independent Claim 14, either directly or indirectly. Thus, because Claim 14 is patentably non-obvious over Badovinatz, in view of Lim, Claims 15-20 must also be patentably non-obvious over the cited combination.

The Examiner has failed to show that all elements of the Applicant's invention are disclosed in Badovinatz and Lim alone or in combination. Furthermore, the Examiner has failed to show the existence of any teaching, suggestion or motivation to modify or combine Badovinatz and Lim. As such, the Examiner has failed to establish *prima facie* obviousness as required by well settled patent law. Thus, reconsideration and allowance of this application are in order, and such action is hereby respectfully requested. The Examiner is invited and encouraged to telephone the undersigned with any concerns in furtherance of the prosecution of the present application.

Please charge any deficiency as well as any other fees which may become due at any time during the pendency of this application, or credit any overpayment of such fees to deposit account No. 50-0369. Also, in the event any extensions of time for responding are required for the pending application(s), please treat this paper as a petition to extend the time as required and charge deposit account No. 50-0369.

Respectfully submitted,

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Dated:

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